Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Federal-State Joint Conference on Accounting Issues	)	WC Docket No. 02-269
	)	

COMMENTS OF QWEST CORPORATION IN RESPONSE TO CONFERENCE REQUEST FOR PUBLIC COMMENT

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To: The Joint Conference

Qwest Corporation ("Qwest") hereby submits its comments in response to the *Public Notice* of the Federal-State Joint Conference on Accounting Issues ("Joint Conference") seeking public comment with respect to a comprehensive review of regulatory accounting and related reporting requirements.[1]

I. INTRODUCTION AND SUMMARY

By *Public Notice* of December 12, 2002, the Joint Conference requested comment on a series of specific and general questions pertinent to the statutory review of the Federal Communications Commission's ("Commission") accounting rules undertaken pursuant to Section 11 of the 1996 Telecommunications Act.[2] In these comments, Qwest addresses several of those questions, and submits that the Commission should seriously consider the need for the continuation of any regulated accounting that differs from the accounting rules and principles used by all major businesses under the standards of the Generally Accepted Accounting Principles ("GAAP") established by the Financial Accounting Standards Board ("FASB"). By

[1] *Public Notice*, *Federal-State Joint Conference on Accounting Issues,* WC Docket No. 02-269, DA 02-3449, rel. Dec. 12, 2002.

[2] 47 U.S.C. § 161.

relying on GAAP, the Commission can also free its resources from second-guessing the FASB and the Securities and Exchange Commission ("SEC") and focus on the most important issues before it -- encouraging and supporting the continued development of competition in the telecommunications sector. Given the mandatory nature of Section 11 of the 1996 Act, Qwest submits that separate regulatory accounting rules that differ from GAAP standards can be justified only when there is a demonstrable regulatory need for such rules. There is no need to depart from GAAP and require an additional and different regulatory accounting regime except in limited instances where GAAP accounting does not provide the information that the Commission needs to fulfill its regulatory mandate. Qwest submits that such a regulatory need will be the exception, not the rule.

Similarly, the Commission should focus its reporting requirements on collecting data that permits it to study the entire telecommunications market, not just parts of the industry. In particular, the ARMIS Reports are filed only by incumbent local exchange carriers ("ILEC"), and the full array of ARMIS Reports are filed only by the Regional Bell Operating Companies ("RBOC"). The limited number of entities actually subject to ARMIS reporting prevents ARMIS data from being useful in making industry evaluations. The Commission should focus its reporting rules on collecting meaningful competitive data, which means that rules should be devised that permit the filing of data by the entire industry, not just a portion of the industry.

II. REGULATORY ACCOUNTING REQUIREMENTS SHOULD DIVERGE FROM GAAP ACCOUNTING PRINCIPLES ONLY UPON A SHOWING OF A PARTICULARIZED REGULATORY NEED.

As an initial matter, it is important that the Joint Conference establish a presumption in favor of GAAP accounting. American businesses (especially publicly-held corporations) account for their operations (and report on them) subject to a number of accounting rules,

regulations and principles that are common to all such corporations. Accounting according to GAAP provides a reasonable and uniform method of assessing and comparing the financial performance of a business on a basis that is uniform throughout the country. Separate regulatory accounting can be justified only when it is necessary to fill a regulatory need that is not met by GAAP accounting. Requiring a separate set of books using different accounting principles by common carriers for any other reason cannot be justified.

Section 11 of the 1996 Act makes this requirement of logic a requirement of law. Under Section 11, the Commission must, every two years, examine its regulations to "determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of [telecommunications] service."[3] If a particular regulation fails to meet this standard -- *i.e.*, if it is not necessary in the public interest -- the Commission is required to repeal or modify the regulation.[4] If an accounting rule of this Commission fails to meet this standard, it must be repealed or modified.

The Section 11 standard requires the Commission to ask whether a particular accounting rule is necessary in light of the other accounting rules that corporations that supply telecommunications services to the public must otherwise comply with. The usefulness of particular information to the Commission is not the only question that Section 11 requires the Commission to ask. The Commission is also required to assess whether the particular accounting practice is necessary in light of the availability of the same (or similar) information from other sources. To be sure, the Commission cannot perform its duties without accurate and meaningful accounting information provided by telecommunications service providers. But the

[3] 47 U.S.C. § 161(a)(2).

mere need for information is not a sufficient justification for establishing or maintaining a separate regulatory accounting regime that differs from GAAP. To justify a rule requiring separate or unique regulatory accounting, especially under Section 11 of the 1996 Act, the Commission must document that the information that is available through GAAP accounting or other accounting rules, principles and conventions would not meet the regulatory need for the information. The burden on the Commission to justify a separate framework is all the greater in instances where the accounting requirement applies to only a small segment of the industry, and where the affected carriers already keep their books according to GAAP.

Similarly, the fact that the Commission might have a need for particular information under some circumstances is not by itself a sufficient justification for rules requiring separate accounting to track that particular information. Unless collection or review of the information requires unique accounting in order to be accurate, or the Commission's ability to review necessary information under specific circumstances would be impeded by the absence of the accounting rule in question, a particular regulatory accounting rule cannot be justified under the standards established in Section 11 of the 1996 Act.

Qwest currently maintains multiple sets of accounting books and adheres to multiple financial reporting requirements. For the most part the differing accounting rules with which Qwest must comply are simply reflective of past conventions, past needs and regulatory inertia. The differences among the various accounting and reporting structures often have no bearing on any legitimate differing needs of the various bodies prescribing the accounting rules.[5] Additional

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[4] 47 U.S.C. § 161(b). *See Sinclair Broadcast Group, Inc. v. FCC*, 284 F.3d 148, 159-60 (D.C. Cir. 2002); *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1048 (D.C. Cir. 2002), *reh'g granted in part*, *amended*, *reh'g denied*, 293 F.3d 537 (D.C. Cir. 2002).

[5] This is not to say that the Commission's accounting rules are wrong or ill advised when they differ from GAAP principles. That is not Qwest's point. The Commission's rules should be

rules would generally make the problem worse. In this context, Qwest submits that the Joint Conference should recommend that practically all Uniform System of Accounts ("USOA") accounting rules should either be eliminated in their entirety or conformed to GAAP principles.

III. REPORTING REQUIREMENTS THAT APPLY ONLY TO RBOCS OR TO OTHER INDUSTRY SEGMENTS SHOULD BE RETAINED ONLY UPON A DEMONSTRATION THAT THESE SPECIFIC REPORTS FILL A UNIQUE NEED THAT CANNOT BE MET BY MORE UNIFORM, INDUSTRY-WIDE REPORTS.

In a similar vein, the Joint Conference should undertake as its primary goal the determination of competitively-neutral reporting requirements that would aid the Commission in evaluating and encouraging facilities-based competition. Focusing on competition as a statutory target will enable the Commission to fairly quickly eliminate many reporting requirements that are primarily legacies from the days of monopoly telecommunications service provisioning. As a starting point, the Commission should announce that it intends to discontinue and eliminate the ARMIS reporting requirements immediately and replace them with industry-wide reports that are relevant to the Commission's evaluation of the growth of (and, if they exist, obstacles to) a competitive telecommunications market. The full array of ARMIS Reports must be filed by only four telecommunications providers -- Qwest, BellSouth, SBC and Verizon -- while a substantial subset of the ARMIS Reports must be filed by ILECs with an annual indexed operating revenue threshold of $117 million. No other company must file the ARMIS Reports. Because they apply only to a small segment of the industry the ARMIS Reports cannot provide meaningful information on which industry comparisons can be made to properly evaluate competition in the telecommunications market.[6] As is the case with accounting rules, the question that the Joint

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modified or eliminated because they differ from GAAP and this difference cannot be justified, not because the rules would be unnecessary if GAAP did not exist.

[6] *See Federal-State Joint Board on Universal Service, Universal Service Monitoring Report*, October 2002. Table 1.8 of this report (for calendar year 2000), at page 1-29, shows total RBOC

Conference (and the Commission) must ask is not whether information submitted in the ARMIS reports is useful. Rather, the proper question is whether this information must be filed in its current form or whether necessary and useful information is already available through more universally-applicable reporting requirements.

The need for universality in reporting is critical in evaluating the necessity of rules requiring reports by carriers. One of the most significant benefits of public reporting by suppliers of telecommunications is that, properly tailored, public reports permit comparative analyses of the various suppliers and industry groupings. Such comparisons are particularly important as the industry becomes increasingly competitive, because the nature and degree of competition can be best assessed by comparing all market participants based on universally-applicable criteria.[7] In other words, unless the Commission can demonstrate an important regulatory need to support separate reporting by a particular group of market participants (*e.g.*, RBOCs or ILECs), the reporting requirements of the Commission should focus on those reports that apply to the industry as a whole, not a portion of the industry.

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revenues from services provided for resale to be $25 billion compared to total industry revenues from resale services of $63 billion. For services provided to resellers, RBOC revenues for the same period were $74 billion, compared to $229 billion for the entire industry. Non-carrier providers of competing services such as cable television providers offering local exchange and toll services were generally excluded from these numbers. Interestingly, this report was prepared based on Commission Form 499 filings made by all telecommunications service providers, demonstrating the strength of Qwest's argument that the ARMIS Reports are not necessary.

[7] It is very common for competitors of ILECs to contend, based on data submitted only by ILECs, that ILECs (or RBOCs) have maintained market power in a particular market. *See*, *e.g.*, AT&T's Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, wherein AT&T argues that the RBOCs' special access rates of return as reported in ARMIS provide "conclusive proof of the Bells' overwhelming market power." AT&T Petition for Rulemaking, filed Oct. 15, 2002 at 8. If comparisons were to be undertaken based on reports that were filed by all competitors, the actual state of competition could be far more accurately assessed. But that information needs to be defined and collected from all market participants.

This does not mean that Qwest is recommending that non-RBOC carriers should be required to file all of the ARMIS Reports in their current form, or that all carriers should be required to file ARMIS data. To the contrary, as the majority of the industry reports based upon GAAP, the Commission should likewise require ILECs to follow GAAP, thus enabling the Commission to assess the market based on industry-wide uniform information. For other reports, the Commission, and the Joint Conference, should instead focus on needed information from all carriers to assess competition and the marketplace. The Commission can devise reports or add to current reports such as the 477 Report on Local Competition and Broadband that enable it to assess accurately the state of competition and the performance of telecommunications service providers in the new environment while conforming its approach to Section 11. The ARMIS Reports, in the meantime, provide no useful information that cannot be obtained via less intrusive and more universally applicable methods, and should be discontinued.

IV. AUDIT REQUIREMENTS SHOULD BE INCREASED ONLY ON THE BASIS OF DEMONSTRATED NECESSITY.

The same analysis should be applied when considering whether additional audits should be required. Namely, any requirement for additional scheduled audits must be tied to a showing that the existing audit process is insufficient, especially in light of the Commission's authority to require or conduct an audit on a case-by-case basis when necessary. Qwest submits that additional regularly-scheduled audits would not materially increase (if at all) the Commission's ability to ensure and verify the accuracy of ILECs' books and accounts. Certainly the Commission has the power to demand an audit of the books of a telecommunications provider whenever a legitimate need arises. However, the burden and expense of additional regulatory audits beyond those currently required (especially by the SEC, which is in the best position to assure the accuracy of carriers' books) are unnecessary and contrary to the dictates of Section 11.

This is particularly the case given the ample incentives telecommunications providers have to maintain accurate books and accounts. For example, the willful making of a false accounting entry by "any person" is a federal misdemeanor punishable by up to three years in prison.[8]

The enforcement authority entrusted to the SEC under the Sarbanes-Oxley Act also provides significant incentives for corporations and their officers to maintain and file accurate financial data with the SEC.[9] Sarbanes-Oxley dramatically increases penalties for filing false information with the SEC as part of an investigation (in some cases up to twenty years in prison),[10] and imposes specific internal and external reporting responsibilities on accountants, attorneys and others who might become aware of corporate wrongdoing.[11] The SEC also has significant enforcement authority to ensure that a telecommunications service provider's books and records are maintained in accordance with GAAP.

In fact, the enhanced enforcement authority given to the SEC by Sarbanes-Oxley provides an independent basis on which this Commission should conform as many accounting rules as possible to GAAP principles as quickly as possible. The SEC's added enforcement powers create additional incentives for carriers that file financial reports to maintain accurate books and records. At the same time this reliance on the SEC can relieve this Commission of the need to review duplicative independent audits except in those cases where a specific regulatory issue requires individual attention. Section 11 of the 1996 Act and the Commission's obligation

[8] 47 U.S.C. § 220(e).

[9] Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (107th Cong.).

[10] *Id*., 116 Stat. at 810.

[11] *Id*., 116 Stat. at 775-91.

to insure accurate accounting can be accommodated by reliance on the expertise of that agency to the extent possible.

V. SPECIFIC QUESTIONS IN THE *PUBLIC NOTICE*.

The *Public Notice* also asks a number of questions, some specific and some general, concerning the future of regulatory accounting and accounting reform. Qwest hereby responds to several of the questions the *Public Notice* describes as addressing "broader issues."

1. *What are the respective roles of the state regulatory agencies and the Commission in maintaining the accuracy and reliability of regulatory accounts, and what is the Commission's role in establishing consistency in minimum regulatory accounting standards nationwide?*

The Commission clearly has the authority to establish uniform national accounts and accounting safeguards. States may establish their own accounting rules to the extent that they relate to intrastate ratemaking.[12] However, in those circumstances where state accounting rules impede the development of competition or otherwise intrude on the Commission's authority under the 1996 Act, the Commission has the authority to preempt state regulation.[13] As noted above, it is important that both federal and state regulators justify any accounting requirements that differ from GAAP principles on the basis that the additional requirements meet a regulatory need that cannot be met in any less intrusive fashion.

In this regard, there is no significant evidence that additional scrutiny of carriers' books is necessary to prevent or uncover accounting inaccuracies. Further Commission and/or state action is not necessary. The Commission's role in establishing uniform accounting standards nationwide should be similarly limited by necessity. For example, uniform accounting and

[12] 47 U.S.C. § 220(a); *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 371-78 (1986).

[13] 47 U.S.C. § 253(d); *AT&T Corporation, et al. v. Iowa Utilities Board, et al*., 525 U.S. 366, 377-86 (1999).

reporting (on a variety of matters) can assist the Commission and states in evaluating the state of competition, a critical task under the 1996 Act. However, to be meaningful, such requirements cannot be limited to a small segment of the industry and must instead cover the entire market.

The fact that regulatory accounting and reporting should be directed primarily at evaluation of the competitive market must also be taken into account in evaluating the role of the states in setting accounting and reporting standards. While states have a key role to play under the 1996 Act in establishing a structure under which competition can develop, carriers almost never compete based on state borders. This is true even in the case of RBOCs, which have been limited to intraLATA services under the Modification of Final Judgment ("MFJ") and Section 271 of the Communications Act of 1934, as amended, since divestiture in 1984.[14] Even when their services were physically offered primarily within a single state, RBOCs competed nationally. All RBOCs now have interLATA authority in at least several states, and their operations are becoming even more national in scope. Moreover, the growth of the Internet, a telecommunications infrastructure that does not recognize either state or international boundaries at all, will push other aspects of telecommunications that were traditionally viewed as intrastate in nature into the interstate arena. The primary purpose of regulatory reporting must be to evaluate competition in the telecommunications market. The primary responsibility for carrying out this evaluation will be with this Commission, simply because competition will become more and more interstate and international in nature.

2. *What are the purposes of regulatory accounting, and how do they compare to the purposes of other types of accounting, including among others, taxation, public company financial disclosure, and corporate accounting?*

[14] *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131, 227-28 (D.D.C. 1982); *see also* 47 U.S.C. § 152 statutory note (Applicability of Consent Decrees and Other Law).

Qwest submits that the public is best served when accounting principles are uniform and one accounting system can be used for multiple purposes. There should be no need for one type of accounting for taxation, one for financial disclosure, one for corporate planning and one for regulation. There is only one legitimate purpose for regulatory accounting that differs from GAAP -- unique needs of the regulator in carrying out its regulatory obligations. In the past the monopoly nature of the telecommunications market required that the Commission establish an accounting system that enabled it to enforce a pricing structure based on the rate of return of regulated carriers. This is no longer the case, as even dominant carriers are generally regulated on the basis of price cap principles rather than rate of return. The same principle should apply to all other needs for accounting data identified by the Joint Conference -- a uniform system of accounting based on GAAP that is useful for all of these purposes should be used, with additional accounting rules for unique purposes required only for rare exceptions.

3. What is the role of regulatory accounting at the present stage in the movement from a regulated monopoly market towards an increasingly competitive communications market?

Regulatory reporting should focus on the availability of information necessary to evaluate the state of competition in the telecommunications marketplace, including information from providers of telecommunications services and alternate providers of cross-elastic services (such as cable modem providers and Internet Service Providers). The state of competition is a hotly-contested issue before the Commission, as evidenced by the *Triennial Review* proceeding still pending at the Commission,[15] the Commission's proceedings on special access and unbundled

[15] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capabilities*; CC Docket Nos. 01-338, 96-98, 98-147, *Notice of Proposed Rulemaking*, 16 FCC Rcd. 22781 (2001).

network element ("UNE") performance measures,[16] the AT&T petition on ILEC special access pricing,[17] intercarrier compensation[18] and numerous other proceedings that depend for their resolution on a determination of the extent of competition in a particular market.[19] ILECs are very limited in their ability to demonstrate competition in many instances, because non-ILEC competitors often have no requirement that they submit to the Commission the information necessary for it to test the state of competition in any particular market.[20] It is vital that the Commission both tailor its information gathering rules to address the regulatory issues directly before it (*i.e.*, the state of competition), and adopt reporting rules that apply to a broad array of competitors in order that the information may be meaningful.[21]

4. Whether the FCC and/or the states should increase their financial monitoring of any telecommunications carriers, including incumbents or

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[16] *In the Matter of Performance Measurements and Standards for Interstate Special Access Services, et al*., CC Docket Nos. 01-321, *et al*., *Notice of Proposed Rulemaking*, 16 FCC Rcd. 20896 (2001); *In the Matter of Performance Measurements and Standards for Unbundled Network Elements and Interconnection, et al*., CC Docket Nos. 01-318, *et al*., *Notice of Proposed Rulemaking*, 16 FCC Rcd. 20641 (2001).

[17] *AT&T Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM No. 10593, *Public Notice*, rel. Oct. 29, 2002. *And see* note 7, *supra*.

[18] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Notice of Proposed Rulemaking*, 16 FCC Rcd. 9610 (2001).

[19] *See, e.g*., *In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review - Review of Computer III and ONA Safeguards and Requirements*, CC Docket No. 02-33, *Notice of Proposed Rulemaking*, 17 FCC Rcd. 3019 (2002).

[20] It is noteworthy that much of this information is not really the financial information customarily associated with accounting.

[21] We are not speaking here about what is often called the "level playing field," the requirement that regulators not impose unequal regulations that assign advantages and disadvantages to different segments of a competing industry. If information relating to competition and the state of the marketplace is collected only from a limited portion of the industry, it will not be sufficient to enable the Commission to perform meaningful assessments of the actual state of competition.

competitive carriers. If so, what additional accounting requirements would be appropriate?

The Commission and the states have many publicly-available sources by which to monitor the financial health of companies. There are many rating agencies and analysts that have a number of experts that monitor the financial condition of publicly-held companies. Instead of increasing its monitoring activities, the Commission should move to standardize both financial and other monitoring requirements across all industry segments in order to permit it to monitor the industry-wide state of competition. The first step in this process would be to assess what information the Commission needs to evaluate competition and competitors. The Commission should not start with an assessment of what accounting requirements are appropriate. The Commission should instead first determine what information is critical for it to make informed decisions in today's telecommunications market. At that point the Commission can better determine how to obtain this information in a reasonable manner from all telecommunications suppliers. Given the precept that the Commission should not seek information that is not maintained by telecommunications suppliers for other purposes without a sound regulatory reason for that information, it is important that the Commission outline the goals of its information requirements before establishing reporting and accounting rules.

5. *Whether the FCC and/or the states should increase the use of audits (including potentially joint federal/state audits) to ensure the consistency and accuracy of accounting information provided by carriers?*

As discussed above, there is no legitimate reason to add to existing audit burdens of carriers. There is no evidence that carriers are not maintaining accurate books of accounts, and there is no evidence that additional audits would make these books more accurate. Carriers are subject to a number of periodic audits in the normal course of business. Additional regulatory audits should be directed only when necessary on an individual basis.

VI. CONCLUSION

Section 11 of the 1996 Act requires the Commission to repeal or modify any rule or regulation that has become unnecessary in the public interest on account of the advent of meaningful economic competition. In analyzing the Commission's accounting and reporting rules under this standard, the Joint Conference should set two primary focal points:

- Accounting rules should track GAAP principles in all instances unless there is a unique regulatory requirement for an accounting practice beyond GAAP.
- Reporting requirements should focus on competition and the state of the competitive market. Accordingly, the Commission should establish reporting requirements that encompass the entire market in order that meaningful analyses of competition can be undertaken.

Respectfully submitted,

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January 31, 2003

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **COMMENTS OF QWEST CORPORATION IN RESPONSE TO CONFERENCE REQUEST FOR PUBLIC COMMENT** to be (1) filed with the FCC via its Electronic Comment Filing System, (2) a copy of the **COMMENTS** to be served, via e-mail on the parties marked with an asterisk (*), and (3) a copy of the **COMMENTS** to be served, via First Class United Stated mail, postage pre-paid, on all other parties listed on the attached service list.

Richard Grozier
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January 31, 2003

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